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**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON  
AT YAKIMA**

MICHAEL SCOTT BRUMBACK,  
an individual, et al.,

Plaintiffs,

v.

ROBERT W. FERGUSON, in his  
official capacity as Washington  
State Attorney General, et al.,

Defendants,

ALLIANCE FOR GUN  
RESPONSIBILITY,

Intervenor.

NO. 1:22-cv-03093-MKD

STATE DEFENDANTS'  
AND INTERVENOR-  
DEFENDANT'S MOTION  
TO STRIKE PLAINTIFFS'  
NOTICE OF  
SUPPLEMENTAL  
AUTHORITY

January 23, 2023  
Without Oral Argument

**I. INTRODUCTION**

The State Defendants and Intervenor-Defendant (collectively "movants") respectfully request that the Court strike the attachments to Plaintiffs' Notice of

1 Supplemental Authority (ECF No. 41) except for the ruling of the Oregon state  
2 court (ECF No. 41-7).<sup>1</sup>

3 These attachments should be struck because they consist of argument and  
4 evidence presented by a defendant in a different case pending in a Washington  
5 State Superior Court in and for King County—they are not legal authority.  
6 Plaintiffs had an opportunity to submit this argument and evidence when they  
7 filed their motion 78 days ago, but did not do so. Now, after briefing has been  
8 submitted, after a hearing was held on the motion, and after the movants’  
9 opportunity to respond has passed, it would be fundamentally unfair to the  
10 movants to permit Plaintiffs to submit additional evidence and argument in  
11 support of their motion.

## 12 II. RELEVANT FACTS

13 Plaintiffs brought suit originally in Washington State Superior Court in  
14 Yakima County on July 14, 2022. ECF No. 1-4. Along with their Complaint, they  
15 filed a motion for injunctive and declaratory relief. ECF No. 1-5. Defendants  
16 removed the case to this Court, which left the motion for declaratory and  
17 injunctive relief unscheduled. *See* ECF No. 1.

18 The parties met and conferred regarding Plaintiffs’ intent to bring a motion  
19 for preliminary injunction, and agreed on a briefing schedule and extension to the  
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21 <sup>1</sup> The State Defendants do not concede, and affirmatively dispute, that the  
22 ruling of the Oregon state court is binding or persuasive authority.

1 page limits otherwise applicable under the local rules, which this Court  
2 subsequently granted. ECF No. 16 at 3; ECF No. 18.

3 Plaintiffs then filed their motion for a preliminary injunction on October  
4 3, 2022. ECF No. 20. Plaintiffs submitted no new declarations or evidence,  
5 relying entirely on their evidentiary submissions to the Yakima County Superior  
6 Court in July 2022. *See id.* Defendants responded, submitting several declarations  
7 from experts in opposition to Plaintiffs' motion. *See* ECF Nos. 23–30. Plaintiffs'  
8 reply, submitted on November 9, 2022, again contained no new evidence or  
9 expert testimony other than what was already submitted to the state court. ECF  
10 Nos. 34, 35.<sup>2</sup>

11 All parties agreed to a hearing on Plaintiffs' motion for preliminary  
12 injunction without live testimony, and a hearing was held on the motion on  
13 November 23, 2022. *See* ECF No. 37. On December 6, 2022, the State  
14 Defendants filed a notice of supplemental authority (ECF No. 38) with the  
15 December 6, 2022, ruling of the Federal District Court for the District of Oregon  
16 denying a motion for preliminary injunction against Oregon's large capacity  
17 magazine regulations. On December 8, 2022, Plaintiffs filed a notice of  
18 supplemental authority attaching an Oregon state court ruling granting a  
19 temporary restraining order against the same Oregon large capacity magazine

20 \_\_\_\_\_  
21 <sup>2</sup> ECF No. 35, the McKnight affidavit, was filed at the Court's direction  
22 after being inadvertently omitted from Defendants' removal notice.

1 regulations, the Oregon State Supreme Court’s denial of a stay of the temporary  
 2 restraining order, and a complaint filed by the Washington State Attorney  
 3 General’s Office against Federal Way Discount Guns, LLC and other defendants  
 4 for violating Washington’s large capacity magazine sales prohibition. ECF No.  
 5 39. On December 14, 2022, the State Defendants filed another notice of  
 6 supplemental authority attaching the ruling of the Federal District Court for the  
 7 District of Rhode Island denying a motion for a preliminary injunction against  
 8 Rhode Island’s large capacity magazine laws. ECF No. 40.

9 Plaintiffs then filed another notice of supplemental authority on  
 10 December 20, 2022. ECF No. 41. It predominantly contains briefing and  
 11 supporting declarations filed by Federal Way Discount Guns, LLC in opposition  
 12 to a motion for preliminary injunction filed by the Attorney General’s Office in  
 13 King County Superior Court. *See generally* ECF No. 41. Specifically, Plaintiffs’  
 14 December 20, 2022 notice of “supplemental authority” consists of:

- 15 • The briefing supporting and in opposition to the motion for  
 16 preliminary injunction in the King County case (ECF Nos. 41-2, 41-3);
- 17 • Declarations attesting to opinions that a 10-round magazine is not  
 18 “large” and to the good character of the principals of Federal Way Discount Guns,  
 19 LLC (ECF Nos. 41-3, 41-4, 41-8, 41-9, 41-10, 41-11);
- 20 • Opinions offered in opposition to the motion for preliminary  
 21 injunction against Federal Way Discount Guns, LLC (ECF Nos. 41-5, 41-6);

- A December 15, 2022, ruling by an Oregon state trial court preliminarily enjoining Oregon’s large capacity magazine regulations based on the Oregon Constitution (ECF No. 41-7);
- A list of the documents filed in the King County case (ECF No. 41-12); and
- A declaration attesting to the authenticity of records (ECF No. 41-1).

### III. ARGUMENT

The movants respectfully request that the Court strike the attachments to Plaintiffs’ notice of supplemental authority, except for the opinion of the Oregon state court (ECF No. 41-7). The bulk of Plaintiffs’ notice consists of factual allegations, opinion testimony, and argument that the movants have had no meaningful opportunity to respond to. *See, e.g.*, ECF No. 41-3 at 10 (arguing that Washington’s large capacity magazine regulations are unconstitutional under Washington State law); ECF No. 41-5 (opining on the purported popularity of AR-15 style rifles and large capacity magazines); *see also* ECF No. 41-6 (opining regarding the history and tradition of weapons regulation in the United States). Moreover, much of the evidence Plaintiffs characterize as “supplemental authority” is straightforwardly irrelevant to this case because it relates exclusively to nonparties. *See, e.g.*, ECF No. 41-11 at 2 (“Mr. Bahgai is a valued community member and provides legal access to shooting supplies, firearm sales

1 and range facilities.”); *see also* ECF No. 41-12 (listing documents filed in the  
2 action against Federal Way Discount Guns, LLC in King County Superior Court).

3 Local Civil Rule 7(b) sets forth the procedures for motions practice in this  
4 Court. It requires a party to file and serve “a motion and any supporting  
5 materials.” Then, the responding party has an opportunity to respond, and the  
6 moving party has a reply. *See* LCivR 7(b). In this case, the parties arranged for a  
7 briefing schedule and for an extension of the applicable page limits. ECF Nos.  
8 16, 18. Plaintiffs could have—but did not—supplement the materials they  
9 originally filed in Yakima County Superior Court at the time they filed their  
10 motion in this Court. *See* ECF No. 20. Plaintiffs could have—but did not—seek  
11 to call live witnesses at the hearing on their motion. *See* ECF No. 37. And even  
12 now, if Plaintiffs thought the materials attached to their notice of supplemental  
13 authority were crucial, they could withdraw their motion and refile it with the  
14 attachments, re-noting it in accordance with the Local Civil Rules so as to give  
15 the movants an opportunity to respond. But Plaintiffs have done none of these  
16 things. They simply filed additional evidence and argument well after hearing on  
17 their motion, with no way for the movants to meaningfully respond. This is  
18 fundamentally unfair, and the Court should strike the supplemental material.

19 Notices of supplemental authority are allowed to alert a court of  
20 subsequent decisions issued after briefing has closed. *See, e.g., Sisk v. Abbott*  
21 *Labs.*, 1:11-cv-00159-MR-DLH, 2012 WL 1164559, at \*1 (W.D.N.C. Apr. 9,  
22

2012) (“[A] notice of supplemental authority [is] commonly used in the federal court system to alert the Court to *a decision of another court* issued after the close of the briefing period.”) (emphasis added); *Legal Sea Foods, LLC v. Strathmore Ins. Co.*, 517 F. Supp. 3d 32, 33 (D. Mass. 2021) (explaining that notices of supplemental authorities “are commonly used in the federal court system to alert courts to *subsequent decisions* relevant to a pending motion.”) (cleaned up, emphasis added). Permitting parties to alert the court to legal authorities issued after briefing has closed makes good sense, because otherwise the court could remain unaware of such developments and make a ruling without the benefit of on-point and potentially controlling precedent. Here, the bulk of Plaintiffs’ notice is simply additional evidence and argument—not at all the sort of thing notices of supplemental authority are for.

For these reasons, the movants do not object to Plaintiffs’ filing of the opinion of the Oregon state court as a supplemental authority. Unlike the other materials Plaintiffs filed, ECF No. 41-7 is a legal opinion issued after the date of Plaintiffs’ last brief and, to the extent the Court finds it persuasive, it is appropriate for the Court to consider it.

#### IV. CONCLUSION

ECF Nos. 41-1, 41-2, 41-3, 41-4, 41-5, 41-6, 41-8, 41-9, 41-10, 41-11, and 41-12 should be struck because they consist of additional evidence and argument—not legal authority—to which the movants have no meaningful

1 opportunity to respond. These materials, which were improperly submitted in a  
2 procedurally unfair manner, should not be part of the record in this case.

3 DATED this 22nd day of December 2022.

4  
5 ROBERT W. FERGUSON  
Attorney General

PACIFICA LAW GROUP LLP

6  
7 s/ William McGinty

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**PROOF OF SERVICE**

I hereby certify that I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System, which in turn automatically generated a Notice of Electronic Filing (NEF) to all parties in the case who are registered users of the CM/ECF system.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

DATED this 22nd day of December 2022 at Olympia, Washington.

*s/ William McGinty*

WILLIAM MCGINTY, WSBA #41868  
Assistant Attorney General